

REDACTED FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, DC

ORIGINAL

In the Matter of)

Petition of Verizon Telephone Companies for)
Forbearance Pursuant to 47 U.S.C. § 160(c) in)
Cox's Service Territory in the Virginia Beach)
Metropolitan Statistical Area)

WC Docket No. 08-49

FILED/ACCEPTED

MAY 13 2008

Federal Communications Commission
Office of the Secretary

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc., on behalf of its affiliate Cox Virginia Telcom, Inc. (collectively, "Cox"), hereby submits these comments in opposition to the forbearance petition submitted by Verizon Virginia, Inc. and Verizon South, Inc. (collectively, "Verizon") in the above-referenced proceeding.¹

I. Introduction

Verizon's new petition for relief in the Cox service areas of the Virginia Beach MSA (the "2008 Petition") is a repackaged version of its forbearance request for the Virginia Beach-Norfolk-Newport News MSA that the Commission properly rejected less than four months ago.² The 2008 Petition solves none of the shortcomings of Verizon's previous effort and includes new flaws that preclude granting the relief Verizon seeks. As the Commission's fifteen-month Six MSA Proceeding demonstrated, the Virginia Beach MSA, including Cox's service areas there, is progressing towards becoming a fully developed competitive market, but is not there yet.

As in the 2007 Petition, Verizon relies almost exclusively on competition from Cox to allege

¹ Petition of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in Cox's Service Territory in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 08-49, filed March 31, 2008; *see also* Pleading Cycle Established for Comments on the Verizon Telephone Companies Petition for Forbearance in the Virginia Beach Metropolitan Statistical Area, *Public Notice*, WC Docket No. 08-49, DA 08-878 (rel. Apr. 15, 2008).

² *See* Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, *Memorandum Opinion and Order*, 22 FCC Rcd 21293 (rel. Dec. 5, 2007) (the "Six MSA Order"). Verizon's Petition covering the Providence metropolitan statistical area is hereinafter referred to as the "2007 Petition."

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that forbearance is warranted in Cox's service territory.³ While Cox has enjoyed success in Virginia Beach, Cox does not duplicate Verizon's ubiquitous network there and Verizon admits that it remains the leading wireline telephone service provider in the market. Moreover, Cox's enterprise market facilities deployment and penetration do not match Verizon's. Indeed, Verizon remains the dominant telephone provider in Cox's service area, with the majority of retail customers and a commanding share of the enterprise market. Verizon's showing elides these facts, overstating the extent of competitive facilities deployment and penetration.

Verizon provides no reason for the Commission to revisit its finding in the *Six MSA Order* "that the record evidence does not satisfy the section 10 forbearance standard with respect to any of the forbearance Verizon requests."⁴ Cox submitted detailed facilities deployment and access line count information in late November 2007 for all of Cox's service areas covered by the 2008 Petition. This information was used by the Commission to deny the 2007 Petition in the *Six MSA Order*. Verizon alleges no significant change in the market since the Commission issued that *Six MSA Order* that would warrant a re-examination of the competitiveness of any part of the Virginia Beach MSA. In fact, Cox has deployed no major new facilities and has experienced **[Begin Confidential] [End Confidential]** since data was provided in November 2007. The 2008 Petition relies on the same data and arguments that the Commission previously rejected and it should be dismissed as duplicative or denied on the merits.⁵

II. Verizon Fails to Correct the Shortcomings the Commission Identified in the 2007 Petition.

The 2008 Petition essentially seeks the same relief as the recently-rejected 2007 Petition, based on a nearly identical evidentiary showing. As in the earlier case, Verizon seeks relief from:

⁴ See *Six MSA Order*, ¶ 1.

⁵ Cox hereby incorporates and reiterates the arguments raised in the Motion to Dismiss, or, in the Alternative, Deny Petition for Forbearance jointly filed by Cox and a number of other competitive local exchange carriers. See Pleading Cycle Established for Comments on Motion to Dismiss or Deny Verizon Virginia Beach Petition for Forbearance, *Public Notice*, WC Docket No. 08-49, DA 08-1056 (rel. May 2, 2008).

(1) the *Computer III* rules; (2) dominant carrier regulation; and (3) loop and transport unbundling.

Although the Commission found in the *Six MSA Order* that Verizon's request for relief from the *Computer III* rules was entirely unsupported by the record or any argument,⁶ the Petition makes no effort to justify relief from those requirements in this proceeding and offers no explanation for how its evidence supports forbearance from these rules. The Commission should summarily deny this unexplained and unjustified request.

Verizon's request for relief from dominant carrier regulation is similarly defective. In the *Six MSA Order*, the Commission noted that facing facilities-based competition from a single cable operator is insufficient to justify relief from dominant carrier regulations governing mass-market services except in extreme cases where the incumbent carrier's market share dips below 50 percent or the level of at least one of its competitors.⁷ Yet the Petition alleges significant facilities-based competition from only a single cable operator (Cox) and does not claim that any competitors have gained a greater share of the wireline telephone market than Verizon continues to possess.

Although Verizon claims competitors serve more than fifty percent of the Virginia Beach residential market, it only gets there by (1) relying on an estimate of "cut the cord" wireless customers that is twice as large as the estimate it provided to the Virginia State Corporation Commission last year;⁸ and (2) including customers of the affiliated Verizon Wireless in its "cut-the-cord" customer counts.⁹ The 2008 Petition therefore provides no justification for a different result on Verizon's non-dominance claim than it obtained in the *Six MSA Order*.

Verizon's request for forbearance from its loop and transport unbundling obligations also

⁶ *Six MSA Order*, ¶ 45.

⁷ *Id.*, ¶¶ 29-30.

⁸ See Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retain Services Are Competitive and Deregulating and Detariffing of the Same, Case No. PUC-2007-0008, filed January 17, 2007, at 2 (arguing that 6 percent of Virginia households have "cut the cord"). Verizon supported this argument by supplying expert testimony. See Testimony of Trevor Roycroft, Case No. PUC-2007-0008, at page 72, lines 17-19 (citing Direct Testimony of Harold E. West, III, at page 7, lines 15-17).

⁹ See 2008 Petition at 11-12; see also *infra* at 7.

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does not meet the requirements of the *Six MSA Order* and previous Commission forbearance orders. Verizon seeks to justify this request by noting that the Commission found in the *Six MSA Order* that future forbearance might be justified in wire centers where competitive facilities deployment exceeds 75 percent.¹⁰ This was not, however, an invitation to file duplicative petitions that make the same showing that the Commission was rejecting. The Commission's key finding in the *Six MSA Order* was that even where one competitor meets the 75 percent facilities deployment threshold, showing competition from a single cable operator and piecemeal competition from "cut-the-cord" wireless providers and assorted other minor competitors is not enough to justify forbearance from loop and transport unbundling for either mass-market or enterprise services.¹¹ But the 2008 Petition offers nothing more than that. As demonstrated below, Verizon has identified no change in the market or new circumstance that would justify a different result than the *Six MSA Order* just 161 days ago.

III. Verizon Identifies No Change in the Virginia Beach MSA that Would Justify a Result Different from the *Six MSA Order*.

As in the 2007 Petition, Verizon's sole premise for its request for regulatory relief is its claim that there is rampant competition in the local exchange telecommunications market in the areas of the Virginia Beach MSA served by Cox. The 2008 Petition and accompanying declarations, however, paint an overly optimistic picture of the current state of competition. What the 2008 Petition actually shows is that Verizon has a clear majority of residential lines, a commanding enterprise market share, and the only ubiquitous network in the MSA.

A. Verizon Continues to Exaggerate Residential Competition in Virginia Beach.

Verizon exaggerates the extent of competitive market penetration. This is true in terms of both facilities deployment and actual market share. Verizon also fails to allege, let alone show, that

¹⁰ 2008 Petition at 6 (citing *Six MSA Order*, ¶ 36).

¹¹ See *Six MSA Order*, ¶¶ 37-42.

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Cox's deployment or market share have changed appreciably since the Commission denied the 2007 Petition.

In terms of deployment, Verizon claims forbearance is warranted because "Cox easily meets the coverage threshold test in Cox's service territory in the Virginia Beach MSA, where Cox has deployed telephony services throughout its footprint. This is true both for Cox's service territory in the MSA as a whole and for each individual rate center within that territory . . ."¹² Cox has not, however, engaged in any large-scale facilities build-out since the Commission considered the 2007 Petition, so Verizon is just resubmitting the evidence that led the Commission to deny forbearance just a few months ago.

Moreover, Verizon provided no evidence that competitors have gained substantial new market share since the Commission rejected the 2007 Petition. Indeed, Verizon admits precisely the opposite, noting that in the 2007 Petition it alleged **[Begin Confidential] [End Confidential]** competitor penetration, whereas it now alleges **[Begin Confidential] [End Confidential]**.¹³ These figures were overstated in the 2007 Petition and they are overstated now, but they plainly fail to substantiate any real change in the market that would justify a different result here than in the *Six MSA Order*.

Verizon's market share figures themselves also suffer from the same shortcomings as those presented in the 2007 Petition. For instance, although Cox again is the only major residential competitor that Verizon identifies by name or for which Verizon even attempts to quantify the number of lines served, Verizon's own estimate of Cox's subscriber numbers falls far short of the **[Begin Confidential] [End Confidential]** overall competitive penetration Verizon claims.¹⁴

¹² 2008 Petition at 6.

¹³ See 2008 Petition at 10, 11, 13, 15.

¹⁴ See 2008 Petition at 11, 13, 15. As described below, Verizon seeks to make up the difference almost entirely through its estimation of the number of "cut the cord" wireless subscribers in Cox's Virginia Beach service area. Verizon's own prior representations, however, suggest it exaggerates this competition by claiming more than twice as many "cut-the-

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Indeed, by Verizon's own admission, Verizon remains the largest residential competitor in the market **[Begin Confidential] [End Confidential]**.¹⁵

As it did in the 2007 Petition, Verizon again fails to substantiate its claims that the residential market in Virginia Beach has a wide range of competitive alternatives from cable, "cut-the-cord" wireless, wholesale and resale.¹⁶ Indeed, Verizon barely attempts to quantify the number of lines served by wireline competitors other than Cox, and its estimate of lines served by other wireline competitors amounts to only about three percent of the market.¹⁷

Verizon's line counts for itself and for its wireline competitors also suffer from the more serious flaw that they are based on white pages directories that the Virginia State Corporation Commission (the "VSCC") has deemed to be highly inaccurate.¹⁸ The massive inaccuracies in Verizon's Virginia directory listings forced it to enter into a settlement in which Verizon committed to expending large sums of money and human capital to fix the problems.¹⁹ In this light, even though the Commission appears to have concluded in the *Six MSA Order* that the use of directory listings can provide evidence of competitor penetration, it should not do so in this case. Instead, the Commission should reject the evidence of wireline competitor penetration that Verizon has provided and require Verizon to derive its competitor line counts from a trustworthy source.

cord" wireless customers as exist in the area and by including Verizon Wireless's "cut-the-cord" customers in its count. See *supra* at 3 & n.8.

¹⁵ Presuming Verizon's counts of Cox and Verizon's lines is correct, Verizon continues to serve more than **[Begin Confidential] [End Confidential]** more residential lines than Cox.

¹⁶ Cox Service Areas Petition at 13.

¹⁷ See *id.*

¹⁸ See 2008 Petition at 11. See *In the Matter of Investigating Directory Errors and Omissions of Verizon Virginia Inc. and Verizon South Inc., Report of Division of Communications*, Case No. PUC-2005-00007 (released Sept. 7, 2006) (the "*Directory Report*"); *Order Approving Offer of Settlement*, Case No. PUC-2005-00007 (released Feb. 13, 2007) (the "*Directory Correction Order*").

¹⁹ See *Directory Report* and attached Offer of Settlement. Part of the corrective action plan included in the settlement was a requirement that Verizon undergo random VSCC audits to determine whether directory listing problems were being corrected. See Offer of Settlement, Section II; *Directory Correction Order* at 15-16. The VSCC has conducted six audits of different Verizon directories around the state since adoption of the *Directory Correction Order*. Though Verizon has passed the audit process on five occasions, it recently failed the audit of its Northern Virginia directory. See *In the Matter of Investigating Directory Errors and Omissions of Verizon Virginia Inc. and Verizon South Inc., 2007 Northern Virginia Directory Audit*, Case No. PUC-2005-00007 (released April 21, 2008).

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Moreover, although Verizon devotes a great deal of attention to alleged “cut the cord” wireless competition, it provides no evidence that significantly more wireless customers have “cut the cord” since the FCC denied the 2007 Petition.²⁰ Verizon relies solely on an estimate from the Centers for Disease Control and Prevention (“CDC”) that 13.6 percent of households nationwide have replaced their wireline service with wireless.²¹ Last year, however, Verizon submitted data from its own research to the Virginia State Corporation Commission demonstrating that only six percent of Virginia consumers had done so.²² Therefore, Verizon is advocating that the Commission rely on a study that overstates “cut-the-cord” wireless penetration by more than 100 percent. Since “cut-the-cord” wireless providers are the only substantial “competitors” Verizon claims other than Cox, its attempt to double the actual number of lines they serve severely undercuts its claim that it faces any significant competition other than that offered by Cox.

Verizon also continues to count lines “lost” to its affiliate Verizon Wireless as lines lost to a competitor.²³ While Verizon may be required by accounting rules to separate its wireless revenues, the two parts of the business are inextricably intertwined. Presuming the Commission continues to count “cut-the-cord” wireless lines as lost lines for Verizon, it should follow the *Six MSA Order* and exclude lines “lost” to Verizon’s own affiliates.

Between its inaccurate white pages evidence and overstated “cut-the-cord” wireless penetration figures, Verizon has significantly overstated the extent of residential telephone

²⁰ 2008 Petition at 12-15.

²¹ 2008 Petition at 12 (citing Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat’l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, January-June 2007*, at 2 (December 10, 2007) (the “Wireless Substitution Study”)). See also *Six MSA Order*, App. B, n.2.

²² See Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retain Services Are Competitive and Deregulating and Detariffing of the Same, Case No. PUC-2007-0008, filed January 17, 2007, at 2 (arguing that 6 percent of Virginia households have “cut the cord”). Verizon supported this argument by supplying expert testimony. See Testimony of Trevor Roycroft, Case No. PUC-2007-0008, at page 72, lines 17-19 (citing Direct Testimony of Harold E. West, III, at page 7, lines 15-17).

²³ See 2008 Petition at 14-15.

competition in Virginia Beach. In any case, Verizon has utterly failed to show that the Virginia beach market is any more competitive than it was when the Commission denied the 2007 Petition.²⁴ The Commission should reach the same result here.

B. Verizon Remains the Dominant Provider of Enterprise Services in Virginia Beach.

Verizon also has not alleged any new development in the enterprise market that would justify a different result from the *Six MSA Order*. While Cox undoubtedly has made progress as a facilities-based competitor, its success in the residential market has not diminished Verizon's overall market dominance in Virginia Beach because Verizon retains a commanding position in the enterprise market. Despite Verizon's claims, Cox's network in its service areas of the Virginia Beach MSA is far from ubiquitous, particularly in business areas that are not immediately adjacent to residential communities. Even when Cox's transport network passes a building, facilities construction often is necessary to reach potential customers. Significant capital investment and construction time are required for Cox to continue to expand its network to individual businesses, which often are unwilling to pay that expense or wait for construction. Consequently, Cox serves only about **[Begin confidential] [End Confidential]** of the number of business lines Verizon serves in its territory in the Virginia Beach MSA.²⁵ Indeed, Cox's network serves **[Begin Confidential] [End Confidential]** of the approximately 79,000 businesses in Virginia Beach.

Verizon's purported evidence of competition from other carriers in the Virginia Beach market does not demonstrate actual enterprise competition. Verizon bases its figures for competitor

²⁴ The Commission consistently has rejected Verizon's efforts to rely on "over-the-top" voice over IP providers, *see* Petition at 16-17, because "there are no data in the record that justify finding that these providers offer close substitute services." *Six MSA Order*, ¶ 23. Verizon provides no reason for the Commission to deviate from that rule in this case. Likewise, Verizon's heavy emphasis on its decline in residential lines served since 1999, *see* Petition at 17-20, consistently has been rejected by the Commission as evidence of a competitive market justifying forbearance. *Six MSA Order*, ¶ 32 (citing *Anchorage Forbearance Order*, 22 FCC Rcd at 1975 & n.88). As Verizon provides no reason for the Commission to abandon its previous reasoning, the Commission should reaffirm that approach in this case.

²⁵ *See* Cox Service Areas Petition at 30, 31.

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penetration on the number of special access lines it is providing to competitors based on its wholesale billing records.²⁶ Verizon appears to assume that if, for example, it is selling a high capacity circuit to a competitor, that competitor is serving the equivalent number of voice grade equivalent enterprise lines; *i.e.* for every DS-3 special access circuit it sells, Verizon assigns a competitor 672 enterprise lines served. This assumption fails for two reasons. First, Verizon has no idea whether the high-capacity circuits it sells are being used at full capacity. Carriers typically purchase high-capacity lines based on cost, and it often is more economical to purchase a single DS-3 circuit than several DS-1 lines, even when the D-3 would provide more capacity than required. In other words, Verizon's "evidence" of enterprise competition is nothing more than evidence of potential competition based on the capacity purchased by its competitors. The likelihood is that Verizon's wholesale billing database evidence vastly overstates the number of business lines served by Verizon's competitors in Virginia Beach

Second, Verizon presumes that its customers are using the special access circuits they purchase to provide the types of enterprise market services relevant to the forbearance inquiry, *i.e.* local voice and data connectivity. In fact, Verizon has no idea what its customers are using its special access circuits to provide. Competitors could be providing any number of services irrelevant to the Commission's inquiry here, including straight long distance, Internet access, or transport services. For this reason, too, Verizon's billing database evidence exaggerates the number of lines that are actually being employed in local enterprise competition.²⁷

The Commission was right when it determined that the enterprise market in the Virginia Beach MSA required denial of the 2007 Petition. Verizon has responded to that denial by providing the Commission with essentially the same information in a slightly different form. It has provided

²⁶ See Petition at 31 & Attachment C, ¶ 12.

²⁷ Finally, Verizon's attempt to use its decrease in lines served as evidence of enterprise competition, *see* Petition at 31-32, was rejected out of hand in the *Six MSA Order* and Verizon offers no justification for considering it here. *Six MSA Order*, ¶ 39.

no new information, however, that would justify a different outcome.

IV. Conclusion

While Cox supports deregulation where it is warranted, the Commission should not reverse the strides competitors have made toward establishing sustainable but still emerging competition in the Cox service areas of the Virginia Beach MSA. The Commission should deny the requested forbearance.

Respectfully submitted,

Cox Communications, Inc.



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May 13, 2008

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CERTIFICATE OF SERVICE

I, Cynthia M. Forrester, a legal secretary at Dow Lohnes PLLC, do hereby certify that on this 13th day of May, 2008, copies of the foregoing Comments of Cox Communications, Inc. were served via hand delivery to the following:

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Territory in the Virginia Beach)	
Metropolitan Statistical Area)	

DECLARATION OF RACHELLE WHITACRE

1. My name is Rachelle Whitacre and I am Director, Regulatory Affairs for Cox Virginia Telcom, Inc.
2. I have read the foregoing Comments of Cox Communications, Inc. (the "Comments") in the above-captioned matter and I am familiar with the contents thereof.
3. I declare under penalty of perjury that the facts contained herein and within the foregoing Comments are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Comments are well grounded in fact and that they are not interposed for any improper purpose.



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Dated: May13, 2008

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